

- 1 ²⁷~~78~~. The battery of claim ²¹~~72~~ further including a non-conductive layer below the
2 battery strength indicator.

- B1
1 ²⁸~~79~~. The battery of claim ²⁷~~78~~ wherein the dry cell battery is a nonrechargeable dry
2 cell battery.

- 1 ²⁹~~80~~. The battery of claim ²⁷~~78~~ wherein the dry cell battery is a rechargeable dry cell
2 battery.

REMARKS

Applicants appreciate the thoroughness of the Examiner's office action and the courtesies granted during the interview on June 1, 2000. Applicants have endeavored to amend the application in order to further the case for allowance. The matters discussed during the interview are summarized below. Reconsideration is respectfully requested in light of the amendments above and the remarks below.

Reissue Application Issues

With respect to surrender of the original letters patent, applicants have filed an offer to surrender on June 23, 1999. U.S. Patent 5,015,544 will be surrendered when the instant reissue application is indicated as otherwise being allowed.

A supplemental reissue declaration is enclosed, signed by one of the inventors. The other inventor's executed copy will be forwarded in the near future.

With respect to a stay in the present case, applicants believe that there are no significant overlapping issues between the instant application and the litigation and

formally request that the application be examined. Claims 12 and 52-63, respectively, of the original reissue application no. 07/963,915, which corresponded to claims 12 and 51-62 of the instant application, were found by Examiner Wieder in the original reissue application to be allowable and not corresponding to the count prior to the time Interference No. 103,036 was declared. A copy is enclosed herewith of the Interference-Initial Memorandum dated April 15, 1994 from reissue application no. 07/963,915. This document confirms that original reissue claims 12 and 52-63 were allowable and designated as not corresponding to the count. The Board of Patent Appeals and Interferences more recently confirmed that original reissue claims 12 and 52-63 were not designated as corresponding to the count. This is shown in the enclosed redeclaration of interference dated June 18, 1999 which was issued to correct an unrelated clerical error at the time priority was decided in favor of the party Burroughs et al.

Examination is also requested on the basis that there is evidence of actual and on-going infringement as stated in the Petition to Make Special and accompanying declaration by the undersigned filed concurrently with the instant application on June 23, 1999. Finally, the decision dated December 9, 1999 on applicants' Petition Under 37 CFR § 1.177 granted applicants' request for non-simultaneous issuance of several reissue applications. Accordingly, applicants believe that they are entitled to have the application examined at this time.

With respect to the objections under 37 CFR §1.172(a) and lack of written consent of all assignees owning an undivided interest in the patent and failure to establish ownership, applicants are enclosing a Consent and Proof of Ownership of Assignee signed by Alan N. O'Kain as Member of Strategic Electronics, LLC which establishes ownership by the assignee in, and the consent of the assignee to the filing

of, the instant reissue application. Please note that, under Nevada law, a "member" of a limited liability company (LLC) is authorized to act on behalf of the company.

Section 112 issues

Independent claims 12 and 51 (along with claims 53-62 dependent thereon) were rejected under 35 USC §112, second paragraph, as being indefinite, i.e., for using the term "quickly." Claims 12 and 51 have been canceled and, to the extent that the subject matter of claims 12 and 51 have been incorporated in the new claims added herein, the term "quickly" has not been employed. Accordingly, 35 USC §112, second paragraph, is believed satisfied.

Claims allowable over the prior art

Claims 53, 55-58 and 60-62 were not indicated as being rejected over prior art. Accordingly, new claims 63-70 place in independent form the subject matter of claims 12 and 51, with minor changes for clarity, with the subject matter of dependent claims 53, 55-58, and 60-62. No new matter has been added. The correspondence of the new claims is as follows:

<u>New claim</u>	<u>Old claims</u>
63	12 and 53
64	12 and 55
65	12 and 56
66	12 and 57
67	51 and 58
68	51 and 58/60
69	51 and 60/61
70	51 and 61/62

Section 102 Issues

Claims 12, 51, 54 and 59 were rejected under 35 USC §102 as being anticipated by Sterling (U.S. Patent No. 1,497,388). Claim 52 was rejected under 35 USC §102 as being anticipated by Marko (U.S. Patent No. 964,994).

Applicants have canceled claims 12, 51, 54 and 59 without prejudice to re-file those claims in a further continuation reissue application.

Applicants have added new claim 71 which incorporates much of the subject matter of claims 12 and 51 and adds the limitations that the battery strength indicator comprises a conductive layer and a heat sensitive color indicating material adapted to undergo a color change when the temperature of the conductive layer rises to a pre-determined temperature corresponding to the pre-determined voltage output across the battery terminals when the switch chamber resilient layer is pressed to place the indicator in electrical contact across the terminals of the battery. Support for this claim is found, for example, in Fig. 10, at column 4, lines 21-38, and at column 8, line 26 to column 9, line 3. This added subject matter is similar to that of claims 53 and 56, which had not been previously rejected over the prior art. The invention defined by new claim 71 is not anticipated by or obvious from either Sterling or Marko since neither one discloses or suggests this type of battery strength indicator in combination with the battery switch on the side of a dry cell battery. Among other things, neither Sterling nor Marko disclose or suggest a battery switch having a resilient, non conductive, deformable layer on a side of the battery in combination with a battery strength indicator comprising a conductive layer and a heat sensitive color indicator layer.

Applicants have also added new claims 72-78, all ultimately dependent from claim 71. Claim 72 recites the conductive layer reduced cross-sectional area previously recited in claims 56 and 61. Claims 73, 76 and 79 recite the nonrechargeable dry cell battery previously recited in claim 12. Claims 74, 77 and 80 recite the rechargeable dry cell battery previously recited in claim 51. Claims 75 and

78 recite the non-conductive layer below the battery strength indicator as disclosed in claim 1.

Fee calculation

Eighteen (18) claims remain in this application after this amendment. Applicants believe that a fee of \$546 is due (7 claims in excess of original patent claims x \$78.00), and authorize this fee to be charged to the undersigned's deposit account no. 04-0566. Please charge/credit any under/over payment associated with this amendment and filing to deposit account no. 04-0566. A duplicate copy of this page is enclosed.

In accordance with the amendments and remarks above, applicants respectfully submit that the instant application has been placed in condition for allowance. Reconsideration of the rejection and allowance and prompt issuance are respectfully requested.

Respectfully submitted,



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I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Name: Barbara Browne Date: June 9, 2000

Signature: Barbara Browne

78 recite the non-conductive layer below the battery strength indicator as disclosed in claim 1.

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